



Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation II (FR II; OMB No. 7100-0349).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer – Nuha Elmaghrabi – Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping and Disclosure Requirements Associated with Regulation II.

Agency form number: FR II.

OMB control number: 7100-0349.

Frequency: On occasion, annually.

Respondents: Debit card issuers and payment card networks.

Estimated number of respondents: Implement policies and procedures, 1; Review and update policies and procedures, 527; General recordkeeping, 527; Annual notification and change in status, 527.

Estimated average hours per response: Implement policies and procedures, 160; Review and update policies and procedures, 40; General recordkeeping, 1; Annual notification and change in status, 1.

Estimated annual burden hours: Implement policies and procedures, 160; Review and update policies and procedures, 21,080; General recordkeeping, 527; Annual notification and change in status, 527.

General description of report: Regulation II—Debit Card Interchange Fees and Routing (12 CFR Part 235) implements standards for assessing whether interchange transaction fees for electronic debit transactions are reasonable and proportional to the cost incurred by the issuer with respect to the transaction, and establishes rules for payment card transactions as required by section 920(a) of the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693o–2(a)).

Section 235.4(b)(1) requires that, in order to be eligible to receive or charge the fraud-prevention adjustment, an issuer that is subject to Regulation II's interchange fee standards (a "covered issuer") must develop and implement policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology. Section 235.4(b)(2) describes the specific requirements that a covered issuer's fraud-prevention policies and procedures must address. Section

235.4(b)(3) requires that a covered issuer must review its fraud-prevention policies and procedures, and their implementation, at least annually, and update them as necessary. Section 235.4(c) requires that, to be eligible to receive or charge a fraud-prevention adjustment, a covered issuer must annually notify its payment card networks that it complies with the standards under section 235.4(b). Section 235.4(d) requires that, no later than 10 days after a covered issuer determines or receives a notification from the appropriate agency under section 235.9 that the covered issuer is substantially non-compliant with the standards set forth in section 235.4(b), a covered issuer must notify its payment card networks that it is no longer eligible to receive or charge a fraud-prevention adjustment. The covered issuer must stop receiving and charging the fraud-prevention adjustment within 30 days after providing such notification to its payment card networks.

Section 235.8(c)(1) requires that any debit card issuer subject to Regulation II (i.e., not just covered issuers) shall retain evidence of compliance with the requirements in Regulation II for a period of not less than five years after the end of the calendar year in which the electronic debit transaction occurred. In addition, section 235.8(c)(2) requires that, where any person subject to Regulation II (e.g., an issuer or payment card network) receives actual notice that it is subject to an investigation by an enforcement agency, such person must retain the records until final disposition of the matter. Compliance with this general recordkeeping requirement involves retaining records to demonstrate fulfillment of the other requirements in Regulation II.

Legal authorization and confidentiality: The Recordkeeping and Disclosure Requirements

Associated with Regulation II are authorized by section 920(a)(3) of the EFTA.¹ The fraud-prevention and disclosure requirements are additionally authorized by section 920(a)(5) of the EFTA.² Regulation II's general recordkeeping requirement for issuers is mandatory. Regulation

¹ 15 U.S.C. 1693o-2(a)(3) (authorizing the Board to prescribe regulations regarding interchange transaction fees and require issuers or payment card networks to provide to the Board such information as deemed necessary).

² 15 U.S.C. 1693o-2(a)(5) (permitting the Board to allow for the fraud-prevention adjustment and condition it upon compliance with fraud-related standards promulgated by the Board).

II's fraud-prevention recordkeeping requirements and disclosure requirements are required to obtain a benefit.

The Recordkeeping and Disclosure Requirements Associated with Regulation II are generally not submitted to the Board or to any of the federal financial regulatory agencies. In the event that the Board obtains such information, it may be kept confidential under exemption 4 of the Freedom of Information Act (FOIA) to the extent that it contains commercial or financial information both customarily and actually treated as private.³ If such information is obtained through the examination or enforcement process, it may be kept confidential under exemption 8 of the FOIA.⁴

Current actions: On December 3, 2021, the Board published a notice in the *Federal Register* (86 FR 68667) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping and Disclosure Requirements Associated with Regulation II. The comment period for this notice expired on February 1, 2022. The Board received two comments.

Detailed Discussion of Public Comments

The first comment letter was from trade associations representing debit card issuers; these commenters supported the proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation II. The second comment letter was from trade associations representing merchants; these commenters did not provide comments related to the Recordkeeping and Disclosure Requirements Associated with Regulation II. Both comment letters addressed substantive issues pertaining to Regulation II that were unrelated to the regulation's information collections.

Board of Governors of the Federal Reserve System, May 17, 2022.

³ 5 U.S.C. 552(b)(4).

⁴ 5 U.S.C. 552(b)(8).

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

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